

**EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT,) )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES) )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al, )

Defendants. )

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THE VIDEOTAPED DEPOSITION OF  
KERRY KINYON, produced as a witness on behalf of  
the Plaintiff in the above styled and numbered  
cause, taken on the 4th day of June, 2008, in the  
City of Tulsa, County of Tulsa, State of Oklahoma,  
before me, Lisa A. Steinmeyer, a Certified Shorthand  
Reporter, duly certified under and by virtue of the  
laws of the State of Oklahoma.

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1 be sworn in.

2 KERRY KINYON

3 having first been duly sworn to testify the truth,  
4 the whole truth and nothing but the truth, testified  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. BULLOCK:

8 Q State your name, please.

9 A Kerry Kinyon.

10 Q Mr. Kinyon, are you represented by counsel 09:07AM  
11 here today?

12 A No, I'm not.

13 Q Okay. As we go through the questions here  
14 today, Mr. Kinyon, I will try not to cut off your  
15 answers. We want to be sure we get complete answers 09:08AM  
16 and that you get to fully respond to my questions.

17 Similarly, sometimes we get to going fast, and the  
18 witness has a tendency to walk over the lawyer and  
19 answer the question before it's fully stated. So if  
20 you can forebear on me, I will attempt to do so for 09:08AM  
21 you, sir.

22 The other thing is that I need to have for the  
23 Record, verbal answers and particularly we need to  
24 try to avoid uh-huhs and huh-uhs because those,  
25 while they communicate personally, in transcribing 09:08AM

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1       them, those are difficult. Is that fine with you?

2       **A**       That's fine.

3       **Q**       Okay. You're appearing here today pursuant to  
4       a subpoena?

5       **A**       Yes, I am. 09:09AM

6       **Q**       And since you were subpoenaed, did you review  
7       any documents in preparation of testifying here  
8       today?

9       **A**       No, I have not.

10      **Q**       Have you conferred with anyone in preparation 09:09AM  
11      for this deposition?

12      **A**       Yes, I have.

13      **Q**       And who was that?

14      **A**       Nicole Longwell.

15      **Q**       And when was that? 09:09AM

16      **A**       Yesterday morning.

17      **Q**       And how long was that meeting?

18      **A**       Approximately 45 minutes, maybe an hour.

19      **Q**       Have you discussed this -- this deposition  
20      with anyone else? 09:09AM

21      **A**       No, I have not.

22      **Q**       Where are you currently employed?

23      **A**       I'm unemployed.

24      **Q**       And how long has that been?

25      **A**       Since end of November 2006. 09:09AM

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1 Q At that time what was your employment?

2 A Vice-president, Peterson Farms.

3 Q Could you go through briefly what your  
4 employment history has been?

5 A I started with Peterson Farms in 1981, started 09:10AM

6 out as an accountant, progressed through purchasing.

7 My primary responsibility was purchasing the grain

8 and soybean meal and the commodities, things like

9 that. Progressed on up to vice-president of

10 purchasing. Became chief operating officer, I 09:10AM

11 believe, in 2001 for a period of maybe two and a

12 half years to three years.

13 Q And was there a period of time that you were

14 replaced as chief operating officer after you

15 achieved it? 09:10AM

16 A There was some reorganization, and the title

17 of COO was done away with, and everyone was just

18 made vice-presidents.

19 Q At the time that you were the chief operating

20 officer, who was your supervisor; who did you report 09:11AM

21 to?

22 A I reported to the board of Peterson Farms and

23 Lloyd Peterson.

24 Q And when you became vice-president, who did

25 you report to? 09:11AM

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1     **A**       Blake Evans.

2     **Q**       How did that reorganization -- what prompted  
3     that reorganization to the extent that you know?

4     **A**       Well, I think Blake came into the company as a  
5     grandson of Lloyd Peterson, and just felt like I                   09:11AM  
6     guess -- he became, I guess, CEO, and just put on --  
7     everybody on the executive committee on the level of  
8     vice-president.

9     **Q**       Could you go through your education starting  
10    with high school?   09:12AM

11    **A**       Graduated Bentonville High School,  
12    Bentonville, Arkansas. Completed approximately a  
13    year and a half at the University of Arkansas and  
14    completed a business management degree at the  
15    University of West Florida in Pensacola, Florida.                   09:12AM

16    **Q**       And when was that?

17    **A**       Let's see. Completed my degree I believe in  
18    1980 or '81.

19    **Q**       That's the degree from West Florida?

20    **A**       Yes, business management.                                   09:12AM

21    **Q**       Since then have you had any other formal  
22    education?

23    **A**       No. I was in the military four years, in the  
24    Navy between University of Arkansas and University  
25    of West Florida but --   09:12AM

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1 take our break.

2 VIDEOGRAPHER: We are now off the Record.

3 The time is now 2:49 p.m.

4 (Following a short recess at 2:50 p.m.,

5 proceedings continued on the Record at 3:00 p.m.)

6 VIDEOGRAPHER: We are now back on the

7 Record. The time is now 3:00 p.m.

8 Q I hand you Exhibit 38, which is Kinyon

9 deposition exhibit Bates numbered PFIRWE 0004943.

10 Do you recognize this?

11 A Vaguely, yes.

12 Q Okay, and could you identify it for the

13 Record?

14 A This is from Thomas Bain, our controller of

15 the company, and I believe this was information

16 having to do with the focus study that Blake was

17 doing on the litter compost.

18 Q And this is dated September 14th, 2006?

19 A Yes.

20 Q And --

21 A Yes.

22 Q It is survey of growers, is it not, reporting

23 the results of a survey of growers regarding litter?

24 A Yes.

25 Q Okay. Do you see where it says 54 percent of

131:8 -132:12

Lack of Foundation - this witness cannot bind the company as his deposition was taken after his employment was terminated under Fed. R. Civ. P. 30(b)(6) and FRE 801 (not an admission by a party opponent); witness' testimony a lack of personal knowledge; and calls for Hearsay under FRE 801; RELEVANCE 402; PREJUDICE 403 Document (State Ex 4009) contains hearsay within hearsay; Hearsay FRE 802 - Document fails to meet any exception for hearsay; document contains hearsay in that the alleged speaker is relaying hearsay from third parties; RELEVANCE 402 AND PREJUDICE 403 - Document and testimony regarding "all growers" could include growers within the Eucha/ Spavinaw watershed - growers which are operating under a Court Order limiting application beyond what is required under ODAFF regulations governing IRW which makes the introduction of such evidence more prejudicial than probative as to activities within the IRW;

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1 the growers would commit their litter to be

2 composted?

3A Yes.

4Q Do you see that?

5A Yes.

03:02PM

6Q And then it goes on down and says, assuming

7 this is a fair sample of how all our growers would

8 respond, we would have 48,000 tons of litter

9 committed available for use. These growers would

10 give the litter away if someone would remove it from

03:02PM

11 the farms. Do you see that?

12A Yes, sir.

13Q Does that not suggest to you that your

14 statement that litter is valuable is not universally

15 held?

03:03PM

16 MS. LONGWELL: Object to form.

17A Well, it goes back to I guess what I learned

18 in grade school. It's an ever-changing world and,

19 you know, I think when I was -- over the years with

20 the company and on up, it was a valuable commodity,

03:03PM

21 and -- but, like I said, you do have different types

22 of growers out there now that are not choosing to

23 farm cattle or grow hay or anything like that.

24 They're just choosing to grow chickens and there,

25 again, I can't answer for those growers, but I have

03:03PM

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1 always known it to be a valuable commodity.

2Q 54 percent -- it was your conclusion, the  
3 company's conclusion that 54 percent of your growers  
4 would just give it away if somebody would pay to  
5 haul it off; correct?

6 MS. LONGWELL: Object to the form. Sorry.

7A That's what it says, correct.

8Q Do you have any opinion as to what would  
9 prompt growers to just give away the litter?

10A Well, if they have no personal need for it,  
11 that might be their best way out.

12Q Best way out of what?

13A Less cost.

14Q Kinyon Deposition Exhibit 40, which is Bates  
15 numbered PFIRWE 0004715. Do you recognize that?

16A Maybe vaguely.

17Q Do you recall -- this is October 10th, 2006,  
18 and you were the person, the final person that  
19 LeNarz addressed this to?

20A That's what it appears, yes.

21Q And this is about the -- Jim Whitt. I think  
22 we spoke about him earlier; was that Jim Whitt?  
23 Maybe not, but Jim Whitt and his associates who have  
24 some alternatives for litter; is that correct?

25A Yes.

133:2-133:13

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